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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,347	03/26/2004	Terry Pullaro	PULT 9283US	8229
1688	7590	11/14/2005	EXAMINER	
POLSTER, LIEDER, WOODRUFF & LUCCHESI			HUNTER, ALVIN A	
12412 POWERSCOURT DRIVE SUITE 200			ART UNIT	
ST. LOUIS, MO 63131-3615			PAPER NUMBER	

3711

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/810,347

Applicant(s)

PULLARO, TERRY

Examiner

Alvin A. Hunter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 14 (second occurrence) has been renumbered claim 17.

### *Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not contain any support for having a the center of mass of the device not located on the handle, only that the center of mass is past or not on the graspable portion of the handle. ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "the graspable portion" in line 3. There is insufficient antecedent basis for this limitation in the claim. Furthermore, it is unclear as to what constitutes the graspable portion of the handle. Clarity needed. For

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examination purposes the graspable portion of the handle will be interpreted as the lower portion of the handle.

Regarding claim 16, the applicant recites that the center of mass is not located on the handle. How is such accomplished when the specification notes that the center of mass is past (not on) the graspable portion of the handle? For examination purposes, claim 16 will be interpreted in the light of claim 3.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wheatley (USPN 5083790).

Regarding claim 1, Wheatley discloses a training stick having a handle 10 shaped like the grip portion of the sport implement in which it is used having first and second ends and a weight 12 on the second end of the handle and wherein the center of mass of the device is less than about 18 inches from the first end of the handle \*See Figures 1 and 8).

Regarding claim 4, Wheatley discloses the weight having a diameter of less than 4 inches (See Column 3, lines 59 through 64).

Regarding claim 12, Wheatley discloses the handle shaped like the grip portion of a golf club.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2, 3, 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huffman (USPN 5215307).

Regarding claim 1, Huffman discloses a training device having a handle shaped like the grip portion of a sport implement having first and second ends, and a weight on the second end of the handle. Huffman discloses the length of the device being 15 to 30 inches. If the device is 15 inches long, the center of mass of the device is less than about 18 inches from the first end of the handle. Furthermore, the location of the center of mass would also depend on the amount of weight used to counterweight the weight on the opposite end. One having ordinary skill in the art would have found it obvious to have the weights on each end any value as set forth by Huffman in order to obtain the desired center of mass.

Regarding claims 2 and 15, as noted above the device has a length of 15 to 30 inches. If the device has a length of 15 inches, the center of mass would depend on the amount of weight on each end of the handle. One having ordinary skill in the art would have found it obvious to have any value weights on each end as set forth by Huffman in order to obtain the desired center of gravity location.

Regarding claims 3 and 16, see the above regarding claim 2 and 15.

Regarding claim 6, it also note that Huffman discussed that weight training exercise usually involve weighted implements such as weighted golf clubs in order to train the muscles of the user (See Background of the Invention). Based on the above, Huffman inherently discloses that the device weighs more than the actual implement used in the sport.

Regarding claims 7 and 8, Huffman notes that the weights are threadably connected to the handle of the device (See Summary of the Invention). This implies that one of either the handle or weight has an internally threaded socket and the other an externally threaded portion. Clearly it can be determined from the drawings that the weight would have an internally threaded socket and the handle having an externally threaded portion being that it is shown that the handle extends into the weight.

Regarding claims 9-13, Huffman notes that the training device can have the grip of the desired sport. Though Huffman explicitly notes baseball, tennis, and golf, the sport is not limited thereto. One having ordinary skill in the art would have found it obvious to use any type of sport implement handle so long as the player is able to maintain normal balance while building up the muscles used while swinging the implement.

Regarding claim 14, Huffman discloses the device having a total length of 15 to 30 inches. Huffman also notes that the length of the weights may vary. If the device has a total length of 15 inches, the length of the handle would depend on the length of the weights. Based on the above, one having ordinary skill in the art would have found it

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obvious to have a handle of any length so long as the total length of the device is met as set forth by Huffman.

Regarding claim 17, see the above regarding claim 1, 2, and 15. Method is implied by Huffman.

2. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huffman (USPN 5215307) in view of Dirksing et al. (USPN 4819935).

Regarding claims 4 and 5, Huffman does not disclose the diameter of the weights but does note that the length of the weights may vary. Dirksing et al. discloses a weighted training bat for ball games wherein the weight has a diameter of 1.625 to 2.75 inches and notes that the length is not critical so long as the connection being the weights and the stem is insured (See Column 5, lines 1 through 14). One having ordinary skill in the art would have found it obvious to have the diameter and length of any value, as taught by Dirksing et al. so long as the weights are adjustable and connect to the supporting member.

### ***Comments***

Applicant should keep in mind that the current pending claim are the same as those filed in application no. 09/598110. It is suggested that the applicant review the parent application to avoid rejection which where already applied in the parent application such as rejections using a hammer.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alvin A. Hunter whose telephone number is (571) 272-

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4411. The examiner can normally be reached on Monday through Friday from 7:30AM to 4:00PM Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim, can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AAH

Alvin A. Hunter, Jr.



EUGENE KIM  
PRIMARY EXAMINER